

OUTGOING TELEGRAM Department of State

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EXCISE 90
OCT 22 - 2 05 PM '62

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ACTION: Embassy Santiago
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CUBA

US expects Cuba quarantine will be taken pursuant to resolution of

Organ of Consultation. Soviets expected to claim, in UNSC, that resolution constitutes "enforcement action" under Article 53 UN Charter, and thus SC authorization required. LA position in SC crucial for disposing of this allegation. It is important that LA delegates in New York be instructed appropriately to oppose and defeat such contention in whatever form it may arise. Please call this matter to attention foreign minister or appropriate official. In discussing this, you may draw upon the following analysis:

Twice before UNSC has considered Art. 53. In September, 1960, Soviets alleged that OAS diplomatic and embargo measures against Dom. Rep. constituted "enforcement action". SC rejected that allegation. Earlier this year, Cuba claimed Punta del Este decisions required SC authorization. Again, SC disagreed.

Basic point which US will make is that measures taken by regional organizations which are recommendatory in form, rather than binding on members of the organization, cannot be considered "enforcement action".

Drafted by:

10/22/62

Telegraphic transmission and
classification approved by:

ARA- Mr. Martin

L:LCMeeker L:UNA:Mark:apj

Clearance:

REVIEWED BY MOSKOVITZ DATE 1/27/68
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Expression, "enforcement of action", appears in Art. 2(5) and Art. 5 of Charter. Action mentioned in these articles refers to action which SC is authorized to take under Arts. 40, 41, and 42. Art. 40 authorizes preventive measures as preventive action. Articles 41 and 42 empower SC to enforce its decisions by calling upon UN members to apply certain measures or to take action directly. In acting under Arts. 40, 41, and 42, SC does more than recommend. It makes binding decisions, which members are obligated to carry out, and it gives direct orders of enforcement.

This character of SC actions under Arts. 40, 41, and 42 is to be distinguished from recommendations made by the SC under Art. 39 or by GA in discharge of its responsibilities under Chapter 4 of Charter. GA has in past recommended use of armed force, despite contention that this constituted "action" which could only be taken by SC. Since GA powers are only recommendatory in field of peace and security, GA does not take "preventive" or "enforcement" action. This distinction between SC measure which is obligatory and constitutes "action", on the one hand, and measure which is recommended either by SC or by GA, on the other, was alluded to by Int. Court Just. in advisory opinion of July 20, 1962 on UN expenses (UNEF and Congo).

Thus, in context UN bodies, "enforcement action" means action which is obligatory on all members. In considering character of measures taken by regional organization, it is reasonable to apply comparable standard in giving effect to "enforcement action" as it appears in Art. 53. Under Art. 20 of Rio Treaty, resolution on use armed force is not obligatory on parties to

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Treaty. Thus, it would not constitute "enforcement action" under Art. 53.

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History San Fran. Conference supports view quarantine resolution compatible with UN Charter. Article 52(1) appeared originally in Dumbarton Oaks text. In interim between Dum. Oaks and San Fran., Amer. Republics approved Act of Chapultepec. Part II that Act is similar to provisions later incorporated Arts. 6 and 8 of Rio Treaty. Part III Act of Chapultepec went on to state:

"The above Declaration and Recommendation ~~shall~~ constitute a regional arrangement for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action in this Hemisphere. The said arrangement, and the pertinent activities and procedures, shall be consistent with the purposes and principles of the general international organization, when established."

Thus Amer. Reps. gave their judgment that measures including the "use of armed force to prevent or repel aggression" constitute "regional action" which might appropriately be taken by a regional arrangement.

When Art. 52 was debated in Com. III/4 at San Fran. Conf., which considered Ch. VIII of Charter, ~~1944~~ Camargo (Columbia) ~~was~~ made lengthy statement concerning relationship Inter-American System and Ch. VIII of UN Charter. Statement ended with "the approval of Art. 52 implies that Act of Chapultepec is not in contravention of the Charter." (At San Fran. LAs vigorously defended need for autonomy regional orgs.)

View that quarantine resolution not "enforcement action" is consistent with purpose Art. 53. There was general recognition at San Fran. that regional orgs had important role to play in field peace and security, particularly with

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Drafted by:

10/22/62

Telegraphic transmission and classification approved by:

ANA - R. Harding

L:LCMeeter, L:UNA:Mark:epj

Classification approved by:

Clearance:

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